

October 9, 1992
JL/pb 92-738.pb

Greg Nickels
Introduced by: Ron Sims

Proposed No.: 92-738

MOTION NO. 8810

A MOTION authorizing the King County Executive to enter into an interlocal agreement with the City of Seattle, for the purpose of permitting King County vehicles to fuel at the City's compressed natural gas fueling station.

WHEREAS, the City of Seattle intends to install a compressed natural gas fueling station at the Charles Street Complex, 805 South Charles Street, and

WHEREAS, this facility would be available to King County for the purpose of fueling alternative fuel vehicles, and

WHEREAS, the county supports alternative fuel programs designed to reduce vehicle fleet emissions and promote energy conservation;

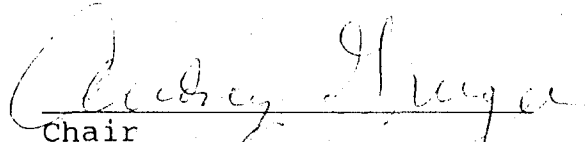
NOW, THEREFORE BE IT MOVED by the Council of King County:

A. The King County executive is hereby authorized to enter into an interlocal agreement with the City of Seattle, in substantially the same form as attached, for the use of its alternative compressed natural gas fuel station;

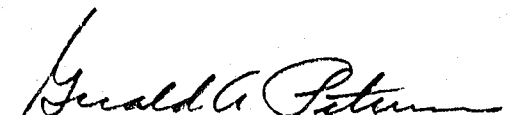
B. The King County executive is hereby authorized to execute such other related agreements as may be required by the City of Seattle.

PASSED this 19th day of October, 1992

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

INTERLOCAL AGREEMENT
AMONG
THE CITY OF SEATTLE, KING
COUNTY, PIERCE TRANSIT,
and the MUNICIPALITY of
METROPOLITAN SEATTLE

THIS AGREEMENT is made by and between THE CITY OF SEATTLE, hereinafter referred to as the "City," acting through its Department of Administrative Services; KING COUNTY, hereinafter referred to as the "County;" PIERCE TRANSIT, hereinafter referred to as "Pierce Transit;" and the MUNICIPALITY OF METROPOLITAN SEATTLE, hereinafter referred to as "Metro."

WHEREAS the City, County, Metro and Pierce Transit desire to cooperate in the establishment of an alternative fuel facility, and subsequent purchase of Compressed Natural Gas fuel, hereinafter referred to as "CNG", to promote clean air for their residents and clients; and

WHEREAS it is in the public's interest that the parties hereto cooperate to secure, for themselves, cost effective alternative fueling services;

NOW, THEREFORE, pursuant to and consistent with the provisions of RCW Chapter 39.34, the Interlocal Cooperation Act, the parties hereto agree as follows:

SECTION 1. TERM OF AGREEMENT

This Agreement shall be effective upon its execution by all parties hereto, and shall remain in effect until terminated.

SECTION 2. INITIAL DEVELOPMENT OF CNG FACILITY & ANY PARTY'S SPECIAL REQUIREMENTS; COST ALLOCATION AMONG PARTIES:

a. Development Costs for CNG Base Facility to be Equally Shared: All the parties herein shall make an equal monetary contribution toward the development of a CNG facility, subject to approval by all the parties to this Agreement of the lowest responsive bid for such work and a Project Budget detailing the anticipated cost of design, construction, permitting, Project management, and fuel supply. It is anticipated that each party's contribution for the development of the CNG base facility will be approximately \$60,000.00. Any associated costs that would increase the original amount of the approved Project Budget by ten percent (10%) or more shall require the approval of all parties to this Agreement. The initial capital contribution by the County, Pierce Transit, and Metro shall be the full extent of financial participation required of such entities for the development of the CNG base facility.

b. Payment of Parties' Respective Shares of CNG Base Facility's Development Costs to City: The City will fund the development of the CNG facility and shall invoice the County, Metro, and Pierce Transit for their respective share of the cost of the CNG base facility (as submitted to the Washington State Energy Office) that exceeds the aggregate amount of any initial grant money received by the City from the State of Washington and other sources, and, if approved by the parties hereto, any contribution by the successful bidder/builder of the facility.

c. Responsibility for Financing Additional Output/Capacity: If any party desires output above that provided by the CNG base facility, that party shall be ultimately responsible for paying whatever additional funds are required to provide such capability, unless otherwise agreed to by all parties. Such payment shall be made without any deduction or setoff, whatsoever, at the City's option, either to the City, upon its invoice for reimbursement of City expenditures for such additional capacity, or directly to an invoicing entity or person, upon City approval of such entity's or person's invoice and submission of such approved invoice to the party requiring additional output. In the event the City requests that such payment be made directly to the invoicing entity or person, the party responsible for such payment shall provide written confirmation to the City of the date and amount of such payment within seven days after such payment is made.

d. Responsibility for Procuring, Repairing & Replacing Special Equipment: The procurement, repair, or replacement of any special equipment shall be the responsibility of the party requiring said equipment. No such procurement, repair or replacement shall occur without prior consultation with the City's liaison designated in or pursuant to Section 10, hereof. The need for extra capacity is not defined as special equipment.

e. Contracts for CNG Facility Development and Fuel Supply: Any contract to build the facility and/or to subsequently provide fuel shall be entered into by the City and the bidder approved by the parties hereto. The appropriate supervision and inspection of the successful bidder/builder's work will be performed by the City. The City shall be responsible for and bear any expense relating to claims and litigation, including costs associated therewith, about the design or construction of the CNG facility. Each contractor and consultant engaged by the City for the development of the CNG facility shall name the City, County, Pierce Transit and Metro as additional insureds on any insurance required by the City.

f. Subordinate Agreements Required Prior to CNG Base Facility Development: The City shall not solicit bids for the development of the CNG facility until the parties to this Agreement have agreed upon the design of such facility, the maximum quantity of CNG that each party shall be allowed to procure from the CNG facility, and the schedule under which each party's vehicles shall be provided access to and CNG fuel from the CNG facility. Neither such maximum quantities nor such schedules shall be thereafter modified without the unanimous approval of all parties to this Agreement.

SECTION 3. CITY RESPONSIBILITIES:

In addition to the other City responsibilities specified in this Agreement, the City shall:

- a. Provide land for the development of the CNG facility in the City's Charles Street Complex.
- b. Develop, own, and operate the CNG facility, soliciting, at its discretion, input from King County, Metro, and Pierce Transit (its primary customers) regarding operational procedures.
- c. Secure all permits, performance guarantees, and equipment necessary to construct the CNG facility.
- d. Resolve all construction issues that affect completion, facility capabilities, and costs.
- e. Contract for any desired consulting services.
- f. Provide a CNG facility capable of quick refueling of vehicles, comparable timewise to gasoline or diesel refueling.
- g. Secure, in consultation and agreement with all other parties, supplies of CNG.
- h. Invoice the other parties and non-primary customers through the City Department of Administrative Services' master accounts receivable system.
- i. Provide access to CNG through the City's automated fuel dispensing system and access numbers or cards for each CNG equipped vehicle.
- j. Maintain and repair the CNG facility.
- k. Provide data to the County, Metro and Pierce Transit via the automated fuel dispensing system, which data will include therms dispensed, total fuel cost, date and time of fueling, fuel-user ID, vehicle ID, fuel type, and odometer reading.

1. Provide service liaison through a specifically identified Fleet Administration official designated by the City, to respond to routine day-to-day matters of mutual concern.

SECTION 4. COUNTY, METRO, and PIERCE TRANSIT RESPONSIBILITIES:

In addition to the other obligations delineated in this Agreement, the County, Pierce Transit, and Metro, individually, shall:

a. Provide specifically designated liaisons to respond to routine day-to-day matters of mutual concern.

b. Take all reasonable measures to ensure that only authorized personnel have access to the CNG facility, and that all respective personnel having access have been instructed as to the proper and safe use of the CNG facility.

SECTION 5. FACILITY OPERATION:

a. Access by parties: The parties hereto shall have equal, unrestricted access to the CNG facility on a 24 hours per day, 7 days per week basis.

b. Access by other entities: Other municipal/governmental and non-governmental fleets ("non-primary customers") may be provided access to the CNG facility when all parties hereto agree it is cost effective and feasible to do so. Non-primary customers shall be required to pay a capital contribution (which may be in the form of a fuel surcharge), the amount and distribution of which shall be as separately agreed by the parties hereto. The total capital contribution received from all non-primary customers shall not exceed the total of the capital contributions made by the parties to this Agreement.

SECTION 6. COMPENSATION:

a. **CNG Fuel & City Overhead Charge:** The City shall charge all parties for CNG fuel they receive from the CNG facility at a rate per CNG therm that covers the fuel cost (as charged by the CNG vendor) plus a reasonable charge for the City's overhead. Prior to awarding of the contract for construction of the CNG facility, the City will work with the other parties to this Agreement to agree upon an overhead amount and the basis on which it shall be calculated. The funds collected for this overhead amount shall be kept in a separate interest bearing account to pay for such things as preventive maintenance and repairs to equipment, cylinder recertification, equipment replacement, and staff billing time. The annual overhead rate is subject to annual adjustments, with agreement of all parties, which shall not be unreasonably withheld.

b. **Payment procedures; Interest:** Any payment due to the City from any other party to this Agreement shall be remitted by such party within 60 days after the date of the City's invoice. If such party does not remit the amount invoiced by the City within this 60 day time period, such party shall also owe to the City interest on the outstanding balance from the date of this invoice to the date paid, at the rate of 7% per annum, unless the delay in payment exceeds six months, in which case the rate shall be 12% per annum.

c. **Damage Charges:** The County, Metro, and Pierce Transit shall reimburse the City for that portion of the reasonable cost of repairing or replacing any portion of the City's Charles Street Complex that is damaged as a result of any act or omission of Metro, King County, or Pierce Transit, or any officer, employee, contractor, or agent of any such party. The amount of such reimbursement, as compared to the total cost for such repair or replacement, shall be in direct proportion to the extent of such party's responsibility for the same.

The City shall be responsible for the cost of repairing any damage done to the CNG facility by any act or omission of any officer, employee, contractor, or agent of the City.

The parties shall share equally the cost of the repair or replacement of the CNG facility and or any part thereof where the source of damage is vandalism, malicious mischief or civil disobedience, assuming the City has taken care to reasonably secure such facility, recognizing it is to be accessible on a 24 hour basis, 7 days per week. Except as otherwise provided in this agreement, no party shall be required to contribute any funds for equipment replacement over and above their respective initial contributions to the CNG base facility and any amounts paid in the overhead rate for equipment replacement.

d. Charge for Unaccounted for Fuel: Except as provided below, for King County during the period it will only nominally use the CNG facility, the parties shall share (based on therm usage by each party during the month in which each such loss occurs) the cost of fuel that is unaccounted for, assuming the City has taken proper care to secure the system. An example of fuel unaccounted for would be fuel dispensed but not recorded due to a malfunction in the electronic recording system. The allocated cost to each party for unaccounted for fuel, shall not exceed three percent (3%) of each party's monthly therm usage. The City shall assume the cost of the County's share of fuel that is unaccounted for until the months in which the amount of fuel procured by or for the County from the CNG facility exceeds 500 therms, at which time the County shall pay for such share of unaccounted for fuel.

e. Purchase of Minimum Quantities of CNG Fuel: Should the parties agree to purchase a specific minimum quantity of fuel, the parties shall be responsible for the payment of the cost of their portion of the specific quantity purchased. Further, each party shall be responsible for the payment of any penalty or special charge incurred or assessed due to a shortfall in its fuel purchases, if any such requirement applies.

f. "Lost" or Missing Access Cards: The County, Metro, and Pierce Transit shall reimburse the City for the reasonable cost incurred to replace any CNG facility access card "lost" by the respective employees of the County, Metro, and Pierce Transit.

SECTION 7. TERMINATION:

a. Termination for Breach: Any party to this Agreement may terminate its participation in this Agreement in the event another party fails to perform its obligations, as described in this Agreement, if, after notice of breach has been provided to such other party, such failure has not been corrected, in a timely manner, to the reasonable satisfaction of the party providing notice of breach .

b. Termination Because of Impossibility or Impracticality of Performance: Any party may terminate this Agreement without recourse by the other parties where the terminating party's performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as, but not limited, to acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout not involving such party; sabotage; or superior governmental regulation or control.

c. **Termination for Convenience:** Any party may terminate this Agreement without cause by giving the other parties at least six (6) months prior written notice of termination. Should any such termination result in a CNG usage penalty or special charge to the remaining parties, the party withdrawing shall pay such penalty or additional charge.

d. **No Refund or Reimbursement of Initial Contribution for CNG Facility Development:** Under no circumstances shall the initial funds contributed by any of the parties herein be reimbursed, should any of the parties subsequently choose to terminate its participation in this Agreement.

e. **Option for Metro, the County, & Pierce Transit To Retain Control of CNG Facility; Relocation:** In the event that the City decides to terminate its operation of the CNG facility and thereby its participation in this Agreement, the other parties to this Agreement will be afforded the option to retain control of the CNG facility's related equipment, at no cost. The City, at its discretion, may require that the CNG facility's related equipment be relocated, in a reasonable time period. The cost of such relocation shall be borne by the remaining parties. The option to retain control of the CNG facility's related equipment is afforded because of the capital contributions of all parties, at the beginning of this Agreement.

f. **Parties' First Right of Refusal Regarding Sale of Any Other Party's Interest:** In the event the City, County, Metro, or Pierce Transit, decides to terminate its participation in this Agreement, the terminating party may sell its rights to access and capacity to another party, or entity, with the approval of the remaining parties. The remaining parties shall retain the right of first refusal with respect to CNG facility access and capacity.

g. **Refunding of Terminating Party's Interest in Overhead Portion Allocated for Equipment Replacement:** In the event a party terminates its participation in this Agreement prior to the end of the useful life of the CNG facility, that party shall be entitled to its proportionate share of that portion of the overhead that has been collected for CNG facility equipment replacement, plus accumulated interest.

SECTION 8. INDEMNIFICATION:

a. **Indemnification for Interruption of CNG Supply:** The County, Metro and Pierce Transit shall hold the City harmless in the event the supply of CNG is interrupted at anytime by the supplier.

b. Agreement for Parties' Sole Benefit; No Partnership: It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

c. Indemnification Against Employees' Acts & Omissions; Contributory Negligence; Attorneys Fees; Waiver of Immunity Under Industrial Insurance: Each party hereto agrees to be responsible and assumes liability for any act or omission of any of its employees while performing work pursuant to this Agreement, to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other parties harmless from any such liability. In the case of negligence of multiple parties, any damages allowed shall be assessed in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other parties in proportion to the percentage of negligence attributable to the other parties. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party. This indemnification obligation shall include, but is not limited to, all claims against a party by an employee or former employee of another party or its subcontractors, and such other party expressly waives all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

d. Notification Regarding Claim: Each party shall promptly notify the other parties of every claim subject to indemnification hereunder and shall not pay, settle or otherwise compromise such claim without prior written consent of the indemnifying party(ies), which shall not be unreasonably withheld.

SECTION 9. NO ASSIGNMENTS:

This Agreement is personal to each of the parties hereto, and no party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other parties. Other entities that desire to become "primary customers" or new parties to this Agreement may do so only as agreed by the then-current parties to this Agreement.

SECTION 10. ADDRESS FOR CORRESPONDENCE AND MATERIALS DELIVERABLE TO CITY:

All correspondence, purchase estimates, payments, and other materials deliverable to the City shall be addressed to the following:

David J. Kerrigan, Director
 Fleet Services
 Department of Administrative Services
 618 Second Avenue, 12th Floor
 Seattle, Washington 98104

or to such other address or addressee as may be specified by the City in a notice to the other parties hereto.

SECTION 11. AMENDMENTS:

No modification or amendment of the provisions hereof shall be effective unless in writing and signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

Subordinate agreements of the parties to this Agreement such as those regarding the acceptability of a bid relating to the development of the CNG facility, the Project Budget, and any increase in the Project Budget in excess of 10% thereof (pursuant to Section 2, hereof); the securing of supplies of CNG (pursuant to Subsection 3.g, hereof); the amount and distribution of capital contributions required of non-primary customers (pursuant to Subsection 5.b, hereof); the amount of the City's overhead (pursuant to Subsection 6.a, hereof); and the sale of any party's rights to CNG facility access and capacity (pursuant to Subsection 7.f, hereof); and the assignment of a party's interest in this Agreement (pursuant to §9, hereof) shall not require a formal amendment of this Agreement.

SECTION 12. EXECUTORY AGREEMENT:

This Agreement will not be considered valid until executed for the City by the Director of Administrative Services or his/her authorized designee.

SECTION 13. BINDING EFFECT:

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal representatives, successors, and assigns.

SECTION 14. REMEDIES CUMULATIVE:

Rights under this Agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

SECTION 15. CAPTIONS:

The titles of sections are for convenience only and do not define or limit the contents.

SECTION 16. INVALIDITY OF PARTICULAR PROVISIONS:

A judicial determination that any term, provision, condition, or other portion of this Agreement, or its application, is inoperative, invalid, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this Agreement, nor shall such a determination affect the application of such term, provision, condition, or portion to persons or in circumstances other than those directly involved in the determination in which it is held to be inoperative, invalid, or unenforceable, and as to such other persons or in such other circumstances it shall continue in full force and effect.

SECTION 17. ENTIRE AGREEMENT:

This Agreement, including the attachments hereto and forming a part hereof (if any), are all of the covenants, promises, agreements and conditions, either oral or written, between the parties on the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have had their authorized representatives affix their respective signatures in the spaces provided below:

THE CITY OF SEATTLE

By _____

DATE: _____

STATE OF WASHINGTON |
COUNTY OF KING | ss.

On this _____ day of _____, 19____, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument on behalf of the City of Seattle, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of
Washington, Residing at: _____
My Commission Expires: _____

KING COUNTY

By _____

DATE: _____

STATE OF WASHINGTON |

ss.

COUNTY OF KING

On this ____ day of _____, 19____, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument on behalf of King County, and acknowledged to me that s/he signed and sealed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

 Notary Public in and for the State of
 Washington, Residing at: _____
 My Commission Expires: _____

MUNICIPALITY OF METROPOLITAN SEATTLE

By _____

DATE: _____

STATE OF WASHINGTON |
COUNTY OF KING | ss.

On this _____ day of _____, 19____, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument on behalf of the Municipality of Metropolitan Seattle, and acknowledged to me that s/he signed and sealed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of
Washington, Residing at: _____
My Commission Expires: _____

PIERCE TRANSIT

By _____

DATE: _____

STATE OF WASHINGTON		ss.
COUNTY OF KING		

On this _____ day of _____, 19____, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument on behalf of the Pierce Transit, and acknowledged to me that s/he signed and sealed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

 Notary Public in and for the State of
 Washington, Residing at: _____
 My Commission Expires: _____